



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

AUG 23 2006

Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First St. NE, Room 1A
Washington, DC 20426

Class: EC-2

Reference: FERC Project No. 2216-066

Dear Ms. Salas:

The Environmental Protection Agency (EPA) has reviewed the draft environmental impact statement (DEIS) for the relicensing of the Niagara Project (CEQ #20060299), located on the Niagara River in Niagara County, New York. This review was conducted in accordance with Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609, PL 91-604 12(a), 84 Stat.1709), and the National Environmental Policy Act (NEPA).

Project Description:

The DEIS was prepared by the Federal Energy Regulatory Commission (FERC) in response to the Power Authority of New York (Power Authority) filing an application for a new license for the 2,755 megawatts (MW) Niagara Project. Diverting water from the Niagara River 2.6 miles upstream of Niagara Falls and releasing it back to the River about 5 miles downstream of the Falls, the project includes the 240 MW Lewiston Pumped Storage Plant and the 2,515 MW Robert Moses Niagara Power Plant. Located in an international waterway, it is subject to the jurisdiction of the International Joint Commission pursuant to the 1909 Boundary Waters Treaty, and operates in accordance with the 1950 Niagara River Water Diversion Treaty, both between the United States and Canada.

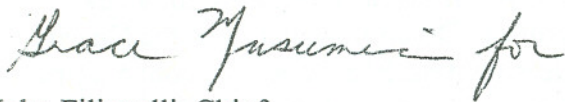
Along with the DEIS, the Power Authority filed an Offer of Settlement that includes four separate agreements: (1) a relicensing agreement with measures the settlement parties request be included in a new license; (2) a host community agreement; (3) an agreement between the Power Authority and the Tuscarora Nation; and (4) a power allocation agreement between the Power Authority and neighboring states. The major components of the proposed action include: (1) funding for eight habitat improvement projects (HIP)s upstream within the project-affected fluctuation zone of the Niagara River; (2) funding for unspecific future habitat enhancement and restoration projects through a habitat enhancement and restoration (HERF) fund; (3) funding to upgrade the City of Niagara Falls water treatment system Fall Street Tunnel; (4) funding for recreation facility improvements; (5) removing eight parcels of land from the current project boundary; (6) no change in the project's mode of operation.

The Niagara River has been designated an Area of Concern (AOC) in the Great Lakes, and we believe that some of the Settlement Agreement provisions for funding habitat projects will work towards rehabilitating the Niagara River AOC and removing some of the beneficial use impairments. However, EPA is concerned that the DEIS has not fully examined the cumulative impacts to water levels in the Chippawa-Grass Island Pool and upriver once the Ontario Power Generation's Niagara Tunnel Project is completed. As per 40 CFR Section 1508.7, "cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. According to Ontario Power Generation, the Niagara Tunnel Project will divert another 500 cubic meters of water from the Niagara River to the Sir Adam Beck hydroelectric project in Canada when it is completed in 2009. At a minimum, the DEIS must discuss the future impacts to the Niagara River's water quality, sediment movement, groundwater flow, erosion, and upriver water levels that may arise from the operation of both the Niagara Project and the new flow to the Sir Adam Beck facility.

In summary, based on our review and in accordance with EPA policy, we have rated this DEIS as EC-2, indicating that EPA has environmental concerns and that the DEIS does not contain sufficient information regarding cumulative impacts for EPA to fully assess environmental impacts.

Thank you for the opportunity to review the DEIS for the project. If you have any questions concerning EPA's comments, please contact Lingard Knutson at (212) 637-3747.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "John Filippelli for".

John Filippelli, Chief
Strategic Planning Multi-Media Programs Branch

Enclosure